

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 04 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

GLEN MARKL,

Petitioner-Appellant,

v.

MICHAEL CHERTOFF,*** Secretary of
the Department of Homeland Security, et
al.,

Respondents - Appellees.

No.04-56615

D.C. No. CV-04-00986-H (BLM)

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L Huff, District Judge, Presiding

Argued and Submitted January 11, 2008
Pasadena, California

Before: FARRIS and M. SMITH, Circuit Judges, and SANDOVAL**, District
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Brian E. Sandoval, United States District Judge for the
District of Nevada, sitting by designation.

*** Michael Chertoff is substituted for his predecessor, Tom Ridge, as
Secretary of the Department of Homeland Security, pursuant to Fed. R. App. P.
43(c)(2).

Glen Markl (“Markl”) appeals the denial of his motion to reopen his deportation proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We affirm.

The Bureau of Immigration Affairs (“BIA”) did not err in denying Markl’s motion to reopen. *In re Velarde-Pacheco*, 23 I. & N. Dec. 253, 256 (BIA 2002) (en banc), is inapplicable to this case because Markl’s marriage occurred before his deportation. Even assuming *Velarde* applies, its requirements have not been satisfied because Markl was afforded an opportunity, pursuant to 8 C.F.R. § 1003.2(c)(1), to apply for the discretionary relief sought in his motion to reopen before the immigration judge. In addition, the BIA’s decision to consider the INS’s late-filed opposition was not an abuse of discretion. 8 C.F.R. § 1003.2(g)(3).

The BIA did not violate Markl’s due process rights in denying his motion to reopen his deportation proceedings. The BIA’s order suggests that it appropriately rested its decision to grant reconsideration on the merits of the government’s motion.

AFFIRMED.